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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,861

01/30/2004

Mark M. Levy

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05/28/2008

EXAMINER

LAM, ANN Y

ART UNIT

PAPER NUMBER

1641

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,861	<b>Applicant(s)</b> LEVY, MARK M.	
	<b>Examiner</b> ANN Y. LAM	<b>Art Unit</b> 1641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-14,17-19,28-32 and 39-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,6,7,32 and 39-57 is/are allowed.
- 6) ☒ Claim(s) 8-14,17-19 and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1 and 2 are objected to because of the following informalities: both of these claims recite "an net influx" in line 2, respectively, which should be changed to --a net influx-- Appropriate correction is required.

Claim 56 is objected to because of the following informalities: in line 2, "design" should be --designed-- Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-14, 17-19 and 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8-14, 17 and 28 each recite "said sink material" in line 1, respectively. The claims lack an antecedent basis for this limitation. (Claims 29-31 are rejected since they depend on claim 28 which is indefinite for the above mentioned reason.)

Claims 18 and 19 each recite "said catalyst" in line 1, respectively. The claims lack an antecedent basis for this limitation.

***Allowable Subject Matter***

Claims 1, 2, 6, 7, 29-32, 39-57 are allowed.

Claims 8-14, 17-19 and 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or suggest a device that is capable of being ingested and comprises a mechanism for generating a net influx of at least one constituent-of-interest present in a gastrointestinal tract of an individual such that the constituent-of-interest becomes absorbed in the mechanism, and wherein the device also comprises a housing confining the mechanism. It is noted that the claimed device is interpreted to mean that the (sink) mechanism is *capable* of absorbing a constituent present in a gastrointestinal tract of an individual and that the term "absorbed" is interpreted to mean absorbed "via high or low affinity binding" as is defined in paragraph 0146 in the specification. (In the response of February 19, 2008, Applicant emphasized paragraph 0146, along with paragraphs 0134 and 0145, and the disclosure in paragraph 0146 appears to give a specific definition for the term "absorb" and thus the limitation "absorbed" in the claims is given this limited definition.) The Stoltz reference is a sampling device and there was no finding of a teaching or suggestion in the Stoltz reference or other prior art to combine the Stoltz device, or similar device, with an element capable of absorbing (having affinity for) a constituent in a gastrointestinal tract.

### ***Conclusion***

It is noted that Examiner had on May 22, 2008 attempted to reach Applicant's attorney via telephone to resolve the above remaining issues but was unable to reach Applicant's attorney.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN Y. LAM whose telephone number is (571)272-0822. The examiner can normally be reached on Mon.-Fri. 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Ann Y. Lam/  
Primary Examiner, Art Unit 1641